



Paper No. 39

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OFFICE OF PETITIONS

In re Application of
Drohan, MacPhee, Nunez, Liao, Burgess & Maciag
Application No. 08/479,038
Filed: June 7, 1995
Attorney Docket No. 1327.0440006
For: SUPPLEMENTED AND
UNSUPPLEMENTED TISSUE SEALANTS,
METHODS OF THEIR PRODUCTION AND USE

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: ON PETITION
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This is a decision on the petition under 37 CFR 1.48(a) to correct the inventorship in the above-identified application and the petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.48(a)(3), which requires an executed oath or declaration by the actual inventors. Both petitions were filed on August 15, 2003.

The petition under 37 CFR 1.183 to waive 37 CFR 1.48(a)(3) is **GRANTED**.

The petition under 37 CFR 1.48(a) to correct inventorship is **GRANTED**.

An executed declaration in compliance with 37 CFR 1.63 was filed on October 5, 1995. The executed declaration listed two joint inventors -- William N. Drohan and Martin J. MacPhee.

The instant petitions were filed to correct the inventorship by adding Hernan Nunez, Gene Liao, Wilson H. Burgess, and Thomas Maciag as joint inventors. The evidence presented shows that Attorney Eldora Ellison Floyd mailed the declaration, the claims as originally filed and any amendments filed in the USPTO to Dr. MacPhee, along with a request that Dr. MacPhee return an executed declaration. Despite several reminder letters mailed to Dr. MacPhee, Dr. MacPhee did not return an executed declaration. The Office finds that Dr. MacPhee has constructively refused to execute the supplemental declaration. Petitioners have shown (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. *In re Sivertz*, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985).

The petition under 37 CFR 1.183 to waive 37 CFR 1.48(a)(3) is **granted**.

Petitioners have also satisfied the requirements of 37 CFR 1.48(a): Petitioners requested correction of inventorship and set forth the desired inventorship change; petitioners have provided a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his part; petitioners successfully obtained waiver of the requirement that the actual inventors execute the declaration; the processing fee was paid; and written consent of the assignee was submitted.

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The petition under 37 CFR 1.48 is **granted**.

Petitioners have shown that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and, accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the addition of Hernan Nunez, Gene Liao, Wilson H. Burgess, and Thomas Maciag as joint inventors.

Please find enclosed a corrected filing receipt that reflects the inventorship change.

Pursuant to petitioners' authorization, petitioners' credit card will be charged a \$130 processing fee, a \$130 fee for filing a petition under 37 CFR 1.183, and a \$180 fee for late submission of an Information Disclosure Statement.

After the mailing of this decision, the application will be forwarded to Technology Center 1600.

Telephone inquiries concerning this matter may be directed to the undersigned at 703 308-6712.



E. Shirene Willis
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Office of Petitions

enclosure: corrected filing receipt

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